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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/314,593	05/19/1999	DALE C. TONOGAI	M-7547-US	5429

34036 7590 10/19/2004

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EXAMINER

VANDERPUYE, KENNETH N

ART UNIT	PAPER NUMBER
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2661

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/314,593

Applicant(s)

TONOGAI, DALE C.

Examiner

Kenneth N Vanderpuye

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-14, 16-27, 29-33, 41-44, 47-53, 66-73 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 10-14, 16-20, 23-27, 30, 51-53 and 66-73 is/are allowed.
- 6) ☒ Claim(s) 21, 22, 29-33, 41, 47-50 and 57 is/are rejected.
- 7) ☒ Claim(s) 42-44 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C.

112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 31-33, 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claim 31, the phrase "a predetermined event" is used in lines 5-6, it is not clear if the predetermined events are the same or different.

With regards to claim 57, it is not clear what is meant by, "...number of snippets is selective based on a telephone number."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-22, 29-31, 41, 50, 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al(6,003,089)

With regards to claim 21, Shaffer teaches a method for transmitting streaming information in a packetized format, the method comprising:

forming a first packet generated over a first duration(Fig 3, original Ethernet packet), in response to a predetermined event(congestion, Fig. 2@72), forming a second packet containing information generated over a second duration(Fig. 4, longer Ethernet packet), wherein the predetermined event is related to deterioration in performance(congestion results in the degrading of network performance), and the second duration is larger than the first duration(Figs. 3-4).

Claim 22 is rejected because the second packet has a larger payload than the first packet(Fig. 4).

Claims 29-30 are rejected because official notice is taken that the use of Ethernet packets to transmit digitized voice or audio is well known in the art. It would have been obvious to one of ordinary skill in the art to combine this well Known art with Shaffer, the motivation being to enable video or audio transmission

With regards to claim 31, Shaffer teaches a method for transmitting streaming information in a packetized format, the method comprising:

forming a first packet generated over a first duration(Fig 3, original Ethernet packet), receiving a second packet and determining occurrence of a predetermined event based on the second packet(inherently taught since the network has to signal the switch in Fig. 1 that the network is unavailable via collision detection signal), in response to a predetermined event(congestion, Fig. 2@72), forming a third packet containing information generated over a second duration(Fig. 4, longer Ethernet packet), wherein the second duration being longer than the first duration(Figs. 3-4).

With regards to claim 41, Shaffer teaches a method for transmitting streaming information in a packetized format, the method comprising:

forming a first packet containing a first number of snippets(Fig 3, original Ethernet packet), in response to an increase in processing requirements(increase requirements is the direct result of congestion, Fig. 2@72), forming a second packet containing snippets of a second number that is larger than the first number(Fig. 4, longer Ethernet packet), wherein the packets are formed by a source device(Fig. 1); and another device informs the source device about the increase(collision detected signal).

Shaffer does not refer to the bytes of payload as snippets. Since snippets represent blocks of data which also represent bytes of data, the hence snippets refers to bytes of data. It would have been obvious to one of ordinary skill in the art to define payload in terms of blocks of data as opposed to bytes of data, since they ultimately mean the same thing.

second duration being longer than the first duration(Figs. 3-4).

With regards to claim 50, Shaffer teaches a method for transmitting streaming information in a packetized format, the method comprising:

forming a first packet containing a first number of snippets(Fig 3, original Ethernet packet), in response to an increase in processing requirements(increase requirements is the direct result of congestion, Fig. 2@72), forming a second packet containing snippets of a second number that is larger than the first number(Fig. 4, longer Ethernet packet), wherein the increase in processing requirements is indicated by an increase in a number of packets being transmitted at a port(increased number of packets waiting to be transmitted via port 56 in fig. 1)

Claims 47-49 are rejected in light of the rejection of claim 50, because the increase in processing requirements is a trigger that initiates the forming of a larger packet. Schaffer teaches one indicator but does not

disclose other kinds of indicators. Hence the use of different indications of an increase in processing requirements is obvious as a matter of design choice since the result is to increase the size of the second packet.

Allowable Subject Matter

Claims 1-6, 10-14, 16-20, 23-27, 30, 51-53, 66-73 are allowed.

Claims 42-44 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 32-33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth N Vanderpuye whose telephone number is 571-272-3078. The examiner can normally be reached on M-F(7:30-5:00) Second Friday Off.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KENNETH VANDERPUYE
PRIMARY EXAMINER

KNV
10/17/04